

In the High Court of Judicature, Bombay.

Thurs day, the 29th day of September 1864.

SPECIAL APPEAL No. 531 of 1864.

Jayram and Lukoola the
sons of Nathaji Patil Power
of the Satara District

Appellants,

(Original Plaintiffs)

VERSUS

Vitoo and Bhagoo and Daji
sons of Nathaji Patil of the
Satara District

Respondents,

(Original Defendants)

Rs. 9-5-6.

The claim in the Original Suit was to *recover possession of*
two fifths of some Gov^r land.

In Appeal No. 398 of 1863 the *Judge*
of the District of *Puttap* at *Puttap* *confirmed*
the Decree of the *Jury of K. Adra* who *had thrown out the claim.*

A Special Appeal was preferred in the High Court on the grounds that (1) the
decision of the District Judge is contrary
to law in that though the disputed
land is not held to be miras yet
it

is an ancestral (family) property
belonging to the Appellants and the
Respondents and over which they have
hundreds of years prescriptive title
and both the parties, ^{therefore} are equally
entitled thereto under the Law - from
the fact of its entry in the name of
one of the parties only the other does
not lose his right thereto, that (2)
admitting the disputed land to be
ancestral family property it is urged
by the Respondents that it fell to their
share but a division took place when
the Appellants father was dead and
they were left minors under the guard-
ianship of their mother, an ignorant
woman, and therefore the Appellants
possess the land according to (their)
share. The onus of proving that the
disputed land fell to their share
ought to have been thrown on the
Respondents and not on the Ap-
pellants; that (3) the plea of
mortgage being raised the Appellants
have shown the nature of their claim
and

and that of the mortgage and therefore
the deeds of mortgage which were with
the Respondents ought to have been
sent for, but instead of doing so it
was held that the appellants did
not at all prove their mortgage =
right which was an error and that
(4) the Appellate Court should not
have rejected the lease ~~as~~ ⁱⁿ evidence.

The Court ~~held~~ ^{finds} that the Judge was wrong in
error in holding that the right of occupancy in
lands held from Government was not property, and
does not descend according to the ordinary laws of inheri-
tence; and the Judge was also in error in not having
laid down the proper issues for trial in the case.

The Court therefore reverses the decree of the Judge and
remands the case in order that the Judge may decide:-

1. Have the Plaintiffs established that the lands in
dispute fell to them share on the division of the fami-
ly property, and if so: -
2. Have the Plaintiffs established that they mortgaged
the fields nos 121, 122 or portions of them to the defendants,
and that they are entitled to ^{said fields or portions of fields} redeem them as they claim
to do without any payment, or on payment of what
is due.
3. Have the Plaintiffs established that the fields nos
121, 122 & 124, or portions of them were let to the defendants
and that they are entitled to recover possession thereof
by reason of the expiration of the term fixed in the lease.
The Judge to pass a new decree on the merits awarding
costs.

A. Kinloch Forles.

H. J. Tucker

MEMORANDUM OF COSTS incurred in Special Appeal No. **531**

of 186 **4** against the decision of the Judge _____ of the District of **Satara** and disposed of on the **29th Sep: 1864** by **remanding the same for retrial**

IN THIS COURT.

BY THE APPELLANT

Stamps for copies of Decree and Judgment	2	8	"		
Stamp for Vukeelutnama	2	"	"		
Batta for Process and Postage	1	7	"		
Sectioner's Fee	2	"	"		
Vukeel's Fee one-fourth	"	1	1		
				Rupees....	8 " 1

BY THE RESPONDENT

Stamp for Vukeelutnama	2	"	"		
Vukeel's Fee one-fourth	"	1	1		
				Rupees....	2 " 1



[Handwritten Signature]

For Acting Registrar

[Handwritten Signature]

For Dealer

the 29th day of September 1864

151
P. 200
Issued a certificate on His Majesty's
Treasury Bank of Bombay for the
refund of Rupee one being the value
of stamp used for Special appeal
in this case

29th September 1864

(Signature)

In acting Registrar

sl
HOP

Certificate drawn

Bombay

For acting Registrar

29th Sept 1864